

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DONALD E. JOHNSON,

Plaintiff,

vs.

CHRIS NEIMAN, et al.,

Defendants.

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Case No. 4:09CV0689 JCH

ORDER

This matter is before the Court on Plaintiff's Exceptions to Court Orders. (Doc. No. 170). The Court will construe Plaintiff's pleading as a Motion to Reconsider. Plaintiff claims that the Court failed to consider his reply briefs before issuing the Memoranda and Orders dated August 5, 6, and 16, 2010. (Id.).

The Court, however, finds that Plaintiff's assertion is without merit. First, on July 26, 2010, Defendants Correctional Medical Services, Inc., Brenda Burlbaw, Jewel Cofield, Elizabeth Conley, Gary Campbell, Beverly Morrison, Lois Cella, and Michael Sands filed their Motion to Compel. (Doc. No. 139). Plaintiff filed his Response on August 2, 2010, which the Court considered before issuing its August 5, 2010 Memorandum and Order. (Doc. Nos. 146, 151). Second, in its August 6, 2010 Order, (Doc. No. 155), the Court denied Plaintiff's Third Motion for Appointment of Counsel after fully considering his motion. Third, the Court considered Plaintiff's response in opposition to Defendants Julie Motley and Herb Yelverton's Motion to Compel filed on August 6, 2010 before issuing the first August 16, 2010 Memorandum and Order. See (Doc. Nos. 156, 159).

Finally, Plaintiff filed a Motion to Compel on July 20, 2010. (Doc. No. 134). After the Court granted their motion for extension of time, Defendants Motley and Yelverton filed their joint response

on August 5, 2010. (Doc. No. 152). In its second August 16, 2010 Memorandum and Order, the Court noted that Plaintiff had failed to file a reply brief. (Doc. No. 160, p. 1 n.1). That same day, Plaintiff attests that he placed his response in the prison's outgoing legal mail, which the Court received on August 18, 2010. (Doc. No. 151, p. 5). "Under the prison mailbox rule, a pro se pleading is deemed filed upon deposit in the prison mail system prior to the expiration of the filing deadline." United States v. Harrison, 469 F.3d 1216, 1217 (8th Cir. 2006) (citing Moore v. United States, 173 F.3d 1131, 1135 (8th Cir. 1999); Grady v. United States, 269 F.3d 913, 916 (8th Cir. 2001)). Thus, the Court deems Plaintiff's reply brief as filed on August 16, 2010. However, the Court finds that Plaintiff's reply was still untimely because it was filed eleven (11) days after Defendants Motley and Yelverton filed their response. See E.D.Mo. L.R. 7-4.01(B)-(C).

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration (Doc. No. 170) **DENIED**.

Dated this 8th day of September, 2010.

/s/ Jean C. Hamilton

UNITED STATES DISTRICT JUDGE